* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on February 13, 2007
Decided on February 26, 2007

+ CRL.REV.P. 929/2006

RAKESH CHAUHAN .....Petitioner
Through Mr. R.K.Sharma, Advocate

Versus

THE STATE & ANR. ....Respondents
Through Mr. V.K.Malik, Advocate for the State

CORAM
Mr. Justice S.Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether the judgment should be reported in the Digest?

Mr. Justice S.Ravindra Bhat :

1. The petitioner had preferred these proceedings under Section 482 Code of Criminal Procedure; later at his request it was converted into revisional proceedings under Section 397/401 Criminal Procedure Code.

2. The petitioner is an accused in a first information report (FIR) registered on 23.2.2004. Originally it alleged that he was guilty of offences under Sections 365, 354, 342, 324 and 34 IPC. As per the statement of the informant/prosecutrix, she and the petitioner were members of an organization/NGO. It was alleged by her that the petitioner sent ward for her requesting that she visit him at his factory; when she went there, the

petitioner and his three associates were allegedly seated there. It is also claimed that the prosecutrix/complainant was taken in a car, to a house and locked with the other three persons. She alleged that the three other boys caused hurt and held her in wrongful confinement for three days. It is alleged that the incident occurred on 20.3.2004 and she was kept in wrongful custody till 22.3.2004 when she effected her escape.

3. The petitioner claims that after recording her version in the FIR, the complainant/prosecutrix again made another statement the next date i.e. on 23.3.2004 which was contradictory. On the basis of the allegations the petitioner was allegedly medically examined twice.

4. The petitioner alleges that the medical opinion was to the effect that these injuries were not as a result of self infliction; however there were no allegations of rape. It is alleged that the petitioner's mobile phone was seized; it however did not match with the description of the prosecutrix's version during the course of the investigation. It is also alleged that 6 persons were examined but none of them corroborated with the complainant's story. Subsequently on 1.4.2004, pursuant to orders made by the court on earlier dates, the prosecutrix's statement was recorded by the Magistrate under Section 164 Code of Criminal Procedure. In the course of this statement, she alleged that threats were held out that if certain documents in her custody were not returned to the petitioner, she would be ruined. In the course of this statement it was also alleged that the petitioner committed rape on the prosecutrix.

5. The police filed a charge sheet, in which it was alleged that the petitioner had

committed offences under Sections 365/354/342/324 and also 376 (2)(g) IPC. The learned Additional Sessions Judge, by her order dated 14.8.2006, framed charges under Sections 342, 365,324 and 376 (2)(g) of the IPC.

6. The charges framed in so far as they relate to Section 376(2)(g) are impugned by learned counsel. It was submitted that the prosecution version is suspect because the complainant in her most contemporaneous versions, given to the police, on 22.3.2004 and 23.3.2004, never mentioned about her being sexually assaulted any time during her so called illegal confinement. It was contended that the only allegations levelled were about being forcibly kept in custody, and blade injuries being inflicted on various parts of her body. Her applications for re-medical examination, though repeatedly made, were rejected by the court. In these circumstances, the court ought not to have lent credence to her version, made 8 days after the incident, on 1.4.2004, in the course of a statement under Section 164 Cr.. P.C.
7. Learned counsel contended that besides the major loophole in the prosecution story, in as much as there was no corroborative material through medical evidence, the court ought to have seen that the complainant was in the habit of levelling false allegations with a view to tarnish the image of respectable persons.
8. Learned counsel submitted that the complainant had on an earlier occasion also alleged sexual assault against some one else, which was subsequently found to be baseless. It was also alleged that the complainant's motive was to maliciously tarnish the petitioner's image, and get back at him since there were other disputes with him. Counsel also submitted that the complainant was also a prolific litigant engaging in

false allegations and seeking to extort money.

9. Learned counsel for the respondent submitted that the prosecution story, supported by the statements recorded on several dates were not merely that the petitioner had wrongfully confined the complainant but also that he had sexually assaulted her. Learned counsel submitted that no doubt the complainant did not mention about such a sexual assault at the earliest point; yet that did not falsify the case or constitute a fatal infirmity. It was submitted that the entire matter, having regard to the seriousness of the offences and the statement made under Section 164 deserves to be tried.

10. Learned counsel however relied upon the judgment of the Supreme Court in *Santosh Kumar Vs. State of M.P. [2006 (3) Crimes 339]* to say that just because no injuries were found on the vital parts of a prosecutrix would not be a ground to hold that no rape or sexual assault had been committed. All these, it was submitted, are matter of trial and the court would have to satisfy itself after considering each and every material on record.

11. The facts of this case, as the above narration would reveal that the petitioner and the prosecutrix apparently knew each other; according to her version, the petitioner had called her to his place, and later conspired to take her around in a car and, subsequently kept her in illegal confinement. She also alleged that the petitioner and his associates had inflicted injuries upon her person. These have received broad corroboration by medical evidence. The question is whether in the absence of a specific mention of rape in her earlier statement, her subsequent allegation made under Section 164 about commission of that offence, cannot be taken into consideration

while framing the charge.

12. While framing charges for offences, the court is expected to apply its mind to all the available materials produced before it by the prosecution. If it is prima facie satisfied that the charge requires to be framed, it should proceed to do so. The court should not of course function as an adjunct of the prosecution – if in the course of its consideration of materials, it can conclude that the evidence presented does not call for framing of one or the other charge, it can refuse to do so.

13. In this case, the peculiar fact highlighted by the petitioner, in the pleadings as well but the course of hearing was that the complainant/prosecutrix graphically mentioned about assault to her person, during the three days period when she was allegedly kept in illegal confinement. In two of her statements made immediately after she fled the place, no mention of rape or sexual assault had been made. Her attempt to secure an order for re-medical examination was turned down. the statement recorded under Section 164 was later i.e. 1.4.2004. The question therefore is whether the court on these circumstances can infer that the accusations of rape and the charge framed for commission of that offence, cannot be made out at all on the basis of the existing and available materials.

14. The Supreme Court in *Santosh Kumar's case* (supra) had considered whether in the absence of material injuries substantiating allegations of rape, on the person of the prosecutrix a court could convict the accused. The court held that the entirety of evidence in such circumstances has to be weighed and that the mere fact that no injuries were found, could not by itself a ground to rule out rape and that the entire

prosecution story is false.

15. In the present case too no doubt the nature and description of injuries at the stage when the prosecutrix lodged the FIR, did not point to sexual assault. Yet she got the statement recorded under Section 164 where she unambiguously alleged rape. At the moment the trial of the accused has not concluded and all the witnesses have not spoken on behalf of both the parties. Though it may be tempting for the court to intervene and draw inferences, the nature of exercise at the time of framing of charges, in my opinion precludes meticulous weighing of probabilities of the evidence and materials. Therefore it would be unsafe to rule out the allegations on the basis of their being improbable or untrue, or lacking in corroboration.

16. As regards the submission of the petitioner that the prosecutrix's past conduct makes her a suspect person and an undesirable element, those materials in my considered opinion, could not have been looked into by the trial court in view of the judgment of the Supreme Court in *State of Orissa Vs.Debendra Nath Padhy,2005(1) SCC 568,* where the court had held that at the stage of framing the charges, the defence

version cannot be seen to conclude the probabilities of the case.

17. For the foregoing reasons, the petition cannot succeed. Accordingly, it is dismissed without any order as to costs.

(S.RAVINDRA BHAT)
JUDGE

FEBRUARY 26, 2007
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